Filed 4/16/12 In re D.T. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re D. T. et al., Persons Coming Under the Juvenile Court Law.	
SACRAMENTO COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES, Plaintiff and Respondent, v. LISA T., Defendant and Appellant.	C065769 (Super. Ct. Nos. JD223888 & JD230728)

Appellant, the mother of A.W. and D.T. (the minors), appeals following a dispositional hearing on an initial petition as to A.W. and a supplemental petition as to D.T. (Welf. & Inst. Code, §§ 300, 387, 395; further statutory references are to this code unless otherwise specified.) Appellant contends

the juvenile court erred by removing the minors from her care. She also claims it was error to deny her services as to A.W.[1] We shall affirm.

PROCEDURAL AND FACTUAL BACKGROUND

In March 2006, juvenile dependency proceedings were initiated by the Sacramento County Department of Health and Human Services (Department) concerning then nine-year-old D.T. and her two siblings based on allegations, as later amended, that appellant continued to have contact with D.T.'s father, L.T., with whom she had a history of domestic violence, in violation of a restraining order. It was further alleged that L.T. was convicted of felony assault in 2005, after attempting to strangle appellant with a belt and holding her and the children "hostage in the bedroom of the home." D.T. reported she had witnessed fighting between her parents on numerous occasions and was present when L.T. choked appellant. Although appellant obtained a restraining order against L.T., it was alleged that she continued to allow him to live in her home and have contact with the children. While the jurisdictional hearing was pending, another incident of domestic violence occurred, in which appellant reported that L.T. punched her in the mouth, loosening her front tooth. She later recanted this report.

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[1] Appellant does not make this claim as to D.T., presumably because the juvenile court set forth an additional basis for denying services with respect to her.

The allegations were sustained, and appellant was granted reunification services. However, her participation and progress during the reunification period was inconsistent. Moreover, according to the social worker, she continued to disregard the restraining order against L.T. and went to "great lengths" to hide their relationship from the Department.

In August 2007, appellant's reunification services were terminated and a permanent plan was ordered for D.T. of out-of-home placement with a goal of guardianship.

In February 2008, appellant married S.W., and a year later, she gave birth to A.W. Appellant claimed she and S.W. separated in April 2009.

Meanwhile, D.T. had numerous placement changes as a result of her behavioral problems. Appellant did not visit D.T. for a period following the termination of services, but by January 2009, they were having regular visitation. D.T. consistently stated that she wanted to reunify with appellant, and in July 2009, appellant's reunification services with D.T. were reinstated.

The following month, police officers responded to a domestic violence incident involving appellant and S.W. A witness reported that appellant and her adult daughter, C.T., "were trying to pack their belongings and leave the apartment[,] as [appellant] and [S.W.] were having problems." According to appellant, she had arranged with S.W. to do this while he was away from the residence and had called "the police to request a

civil standby in case [S.W.] showed up and caused a problem." S.W. arrived while appellant was still there and tried to take A.W. out of her car seat. When C.T. attempted to intervene, S.W. punched her several times, then punched appellant when she told him to leave C.T. alone. According to the police report, appellant said she did not know why S.W. did this, but she thought he did not want her to leave.

Following the incident, S.W. was convicted of battery on a spouse (Pen. Code, § 243, subd. (e)), and a criminal protective order was entered. There is nothing in the record to indicate that appellant disclosed this incident to the Department or her service providers.

As later reported by appellant, a joint custody order was entered concerning A.W. in October 2009 that allowed S.W. to be in the home from Thursday through Saturday. According to appellant, the criminal protective order was attached to the custody order. Neither the custody order nor the criminal protective order is contained in the record on appeal. The only other evidence of the custody order is a later report by a police officer that appellant showed him a copy of a joint custody order that did not have "any court stamps on it." Again, it does not appear that appellant informed her service providers or the social worker of the purported custody order at the time it occurred.

In the meantime, appellant participated in an array of reunification services, including domestic violence counseling,

a parenting class and a domestic violence group. She voluntarily continued in counseling after completing the required sessions, reporting that she wanted to address issues related to the domestic violence she experienced with L.T.

According to the domestic violence counselor's treatment summary in March 2010, appellant had made "excellent progress in her ability to verbalize understanding" of her domestic violence issues. Likewise, the social worker believed appellant had made "significant efforts to change her life and get . . . [D.T.] back." Again, neither the social worker nor the counselor made any mention of S.W. or the domestic violence issues appellant had in her relationship with him. The Department recommended that D.T. be returned to appellant's care.

In April 2010, the juvenile court placed D.T. with appellant, finding the progress she had made towards alleviating the problems necessitating placement had been excellent.

Less than six weeks later, an original petition as to A.W. and a supplemental petition as to D.T. were filed based on recent incidents of domestic violence between appellant and S.W. In the most recent incident, which occurred four days before the filing of the petitions, S.W. allegedly grabbed and pushed appellant, who was on the couch with A.W., then punched her in the face, threw her to the ground and choked her.

The social worker chronicled other recent instances of domestic violence that came to light when the minors were removed. A few days before the most recent incident, D.T. and

S.W. had an argument in the car, during which S.W. "curs[ed]" at her and "call[ed] [her] names." According to D.T., upon returning home, S.W. entered her room holding a belt, at which time D.T. had a kitchen knife in her hand. A physical altercation ensued. Appellant heard yelling and went into D.T.'s room, where she told S.W. to get off of D.T. S.W. and appellant began to argue, at which point he told her she needed to choose between him and D.T.

According to appellant, she allowed S.W. to remain in the home that night because he "was intoxicated and was asleep on the couch." She believed he was still intoxicated early the following morning, at which time they got into another argument. During the argument, S.W. hit and choked appellant, then "'threw' her and . . . [C.T.] out of the house." He then drove away with A.W. While speaking to a witness a few hours later, S.W. stated "he took the baby because [appellant] was going to leave him." Appellant called the police.

Two days later, S.W. returned A.W. to appellant. A few hours later, he was stopped by police officers, who were unaware that the minor was no longer missing. S.W. then went to appellant's residence and told her he was going to kill her for calling the police. According to appellant, S.W. again assaulted her and "threw [her] and . . . [C.T.] out of the home," then drove away with A.W. When S.W. returned to the residence, he was arrested.

When appellant was interviewed the day after the minors were detained, she denied any domestic violence by S.W. other than the events immediately preceding the filing of the recent petitions. She also "was not forthcoming regarding the reason for the [c]riminal [p]rotection [*sic*] [o]rder." However, she told the social worker that "she 'really gets it now' regarding the domestic violence in the home." During an interview a few weeks later, appellant acknowledged that S.W. and she had a history of domestic violence. She subsequently obtained a restraining order against S.W. from the juvenile court.

At the jurisdictional/dispositional hearing, S.W. testified that he and appellant signed the lease for the house where she lived and that he had been living there "every day."

Appellant submitted on the issue of jurisdiction but objected to out-of-home placement of the minors and the denial of services to her.

The juvenile court sustained the allegations in the petitions and found there would be a substantial risk to the minors if returned to appellant. The court denied appellant services pursuant to section 361.5, subdivision (b)(10) (parent has not made reasonable efforts to treat problem leading to removal of a sibling or half-sibling as to whom parent failed to reunify) and (11) (parent has not made reasonable efforts to treat problem leading to removal of a sibling or half-sibling as to whom parental rights were terminated). In addition, the court denied appellant services with D.T. based on "the fact

that the 18[]-month period for services ha[d] elapsed." As there was no basis to deny reunification services to S.W., the court granted him services with A.W.

None of the parties expressly addressed whether appellant had made a reasonable effort to treat the problems that led to removal of the minors' half-siblings (§ 361.5, subd. (b)(10) & (11)), nor did the court make any oral findings in this regard. However, the court's written order as to A.W. included a finding in this regard.

DISCUSSION

I

Appellant argues the juvenile court should not have removed the minors from her at the dispositional hearing. This claim lacks merit.

Section 361, subdivision (c)(1) provides in relevant part: "A dependent child may not be taken from the physical custody of his or her parents . . . unless the juvenile court finds clear and convincing evidence . . . . [¶] [that t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody."

"A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains

with the parent. [Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds in *In re Renee J.* (2001) 26 Cal.4th 735, 748, fn. 6.) "In this regard, the court may consider the parent's past conduct as well as present circumstances." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.)

Removal findings are reviewed under the substantial evidence test, drawing all reasonable inferences to support the findings and recognizing that issues of credibility are matters for the juvenile court. (*In re H.E.* (2008) 169 Cal.App.4th 710, 723-724; see *In re Christina T.* (1986) 184 Cal.App.3d 630, 638-639.)

Here, appellant had a history of relationships with individuals who posed a danger to her and her children. This history included concealing her abusive relationships from the juvenile court and the Department. Although appellant participated in various programs, this had not prevented her from exposing her children to violence in the home resulting from the relationships she maintained. Thus, the juvenile court was warranted in concluding that the minors could not safely be returned to her care.

Appellant argues the minors were no longer at risk because S.W. was incarcerated and there was a restraining order against him. But, notwithstanding appellant's claim that S.W. was

"likely . . . [to] be incarcerated for a significant amount of time," no evidence of this appears in the record. Moreover, appellant's history -- which included a pattern of disregarding restraining orders -- rendered it uncertain whether she would enforce the restraining order against S.W.

Appellant resurrects the claim she made before the juvenile court that she was obligated to see S.W. because of the alleged joint custody order regarding A.W. and blames the courts that issued the criminal protective order and the custody order for not prohibiting S.W. from visiting A.W. We note again that there is scant evidence in the record of the existence or content of such an order. Moreover, even assuming appellant has accurately represented the content of the custody order, we are skeptical that such an order would have been entered had appellant been forthcoming about the domestic violence that S.W. had perpetrated.

Appellant asserts that removal would cause D.T. more harm than allowing her to remain with appellant because D.T. wanted to live with her and had been in a number of unsuccessful placements. We agree that, in some circumstances, the harm to a child from removal may be greater than the harm the social services agency seeks to prevent. (See *In re H.G.* (2006) 146 Cal.App.4th 1, 17.) However, this is not such a case. Not only had D.T. witnessed domestic violence in the home, she had been involved in a physical altercation with S.W. and was the

target of his wrath. Under such circumstances, the risk of harm to D.T. if returned was significant.

Appellant analogizes her circumstances to those in *In re Steve W.* (1990) 217 Cal.App.3d 10 (*Steve W.*), involving removal of a child whose sibling was physically abused by the other parent, resulting in the sibling's death. The appellate court reversed the removal order based on the lack of evidence that the mother knew the father was abusing the sibling and the unlikelihood that she would resume her relationship with the father. (*Id.* at pp. 21-22.) The court held that removal could not be premised solely on a concern that the mother would enter into a new relationship with an abusive partner, which it deemed "pure speculation." (*Id.* at p. 22.)

Appellant's situation is readily distinguishable. The appellate court in *Steve W.* recognized that, in making a determination regarding removal, a "relevant factor is whether the nonoffending parent allowed or might allow the offending parent to return and continue the abuse." (*In re Steve W.*, *supra*, 217 Cal.App.3d at p. 22.) Unlike the mother in *Steve W.*, appellant had a history of concealing her violent relationships from the Department and the court. And while the father in *Steve W.* was serving a six-year sentence, the record is silent as to whether S.W. had been sentenced or how long it was anticipated that he would remain incarcerated. Consequently, the danger to the minors of remaining in appellant's care was not merely speculative.

For the same reasons, we disagree with appellant that a reasonable alternative to removal was to keep S.W. away from her and the minors while providing her services. There were simply no means of assuring that ordering S.W. to stay away from the home would be effective or that appellant would be willing to enforce such an order.

In sum, substantial evidence supports the juvenile court's order removing the minors from appellant.

II

Appellant also contends it was error to deny her reunification services with A.W. because she had made reasonable efforts to address her domestic violence issues. Reviewing the court's order for substantial evidence (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96), we conclude that appellant's concealment of her relationship with S.W. provided a sufficient basis for a contrary finding.[2]

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[2] Neither the juvenile court nor the Department set forth this specific basis for the finding that appellant had not made reasonable efforts to address her domestic violence issues. The juvenile court failed to state, in either its written or oral ruling, any factual basis for this finding. The only basis offered by the Department was appellant's continued involvement in relationships involving domestic violence despite the provision of extensive services. But, as noted herein, the determination regarding reasonable efforts is not dependent on the amount of progress the parent has made. Nonetheless, we are charged with examining the entire record to determine whether there is substantial evidence to support the juvenile court's findings. (*In re Cole C., supra,* 174 Cal.App.4th at pp. 915-916.) As we shall explain, there is ample evidence to support the juvenile court's denial of services based on appellant's

Appellant was denied reunification services under section 361.5, subdivision (b)(10) and (11), which authorizes the denial of services to a parent who has failed to reunify with another child or whose parental rights to another child were terminated. In order to deny services under these provisions, a juvenile court is required to find by clear and convincing evidence that the parent "has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling . . . ." (§ 361.5, subd. (b)(10) & (11).)

"In enacting . . . [these provisions], 'the Legislature has made the decision that in some cases, the likelihood of reunification is so slim that scarce resources should not be expended on such cases.' [Citation.] 'Inherent in this subdivision appears to be a very real concern for the risk of recidivism by the parent despite reunification efforts.' [Citation.]" (*Cheryl P. v. Superior Court*, *supra*, 139 Cal.App.4th at p. 96.)

The reasonable efforts requirement focuses on the extent of a parent's efforts, not whether he or she has attained "a certain level of progress." (*Cheryl P. v. Superior Court*, *supra*, 139 Cal.App.4th at p. 99.) "The statute provides a 'parent who has worked toward correcting his or her problems an opportunity to have that fact taken into consideration in subsequent proceedings.' [Citation.] To be reasonable, the

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concealment of her relationship with S.W., despite the court's failure to identify this or any other basis for its ruling.

parent's efforts must be more than 'lackadaisical or half-hearted.'" (*K.C. v. Superior Court* (2010) 182 Cal.App.4th 1388, 1393.) However, "[t]he 'reasonable effort to treat' standard 'is not synonymous with "cure."'" (*Ibid.*)

Appellant argues that her participation in services after reunification efforts with D.T. were reinstituted constituted a reasonable effort to address her domestic violence issues. It is true that appellant participated in an array of services during this period and that the juvenile court and the Department were sufficiently convinced of her progress at one point to return D.T. to her care. However, our focus is not on the number of services in which appellant participated, but whether her efforts to address her domestic violence issues were reasonable.

Despite appellant's claim that S.W. and she separated in April 2009, the evidence supports the conclusion that appellant's relationship with S.W. had continued. In August 2009, four months after the purported separation, appellant was retrieving her belongings and moving out of S.W.'s apartment because they were having problems. At that time, she told a police officer who had responded to the domestic violence call that she thought S.W. did not want her to leave.

In 2010, during the incidents preceding the filing of the most recent petitions, S.W. told appellant she needed to choose between him and D.T. Around the same time, S.W. stated that he had taken A.W. from the home because appellant was going to

leave him. These statements indicate that appellant and S.W.'s relationship was ongoing when the minors were removed.

There is also ample evidence that appellant concealed her relationship with S.W. from the Department, the service providers and the juvenile court. The domestic violence counselor's positive treatment summary regarding appellant's progress made no mention of appellant's relationship with S.W. or the domestic violence that had occurred in that relationship. Instead, the summary lauded appellant for continuing counseling in order to address issues related to domestic violence by D.T.'s father. Likewise, information about S.W. is glaringly absent from the social worker's report filed shortly before D.T. was returned to appellant, even though a section addressing appellant's current circumstances discussed the fact that there was an active protective order against D.T.'s father. The only reasonable explanation for the omission from these reports of information about S.W. -- who had two domestic violence convictions (including the one involving appellant) and a criminal protective order against him -- is that neither the social worker nor appellant's counselor was aware of the nature of this relationship.

There is other evidence in the record to support that appellant intentionally concealed the nature of her relationship with S.W. Appellant had a history of attempting to deceive the Department and the juvenile court about her relationships with violent partners. In the previous dependency case, she was

described as going to "great lengths" to hide her relationship with D.T.'s father, presumably because she knew she would not be permitted to reunify with her children if she continued the relationship. Following the minors' removal, appellant initially denied there had been any incidents of domestic violence by S.W. other than those immediately preceding the minors' detention. She also was not forthcoming about the reason for the criminal protective order against him.

A reasonable inference from all of this evidence is that appellant concealed an ongoing relationship with S.W. from the Department, the service providers and the court. Thus, although appellant's involvement in counseling may have allowed her to "verbalize understanding" of domestic violence issues, it can be concluded that her efforts to actually resolve these issues lacked sincerity. Accordingly, we conclude the juvenile court's finding that appellant had not made reasonable efforts to resolve the problems that led to the prior removal of her children is supported by substantial evidence.

III

Appellant's final claim is that, regardless of whether there was a valid basis for bypassing reunification services, the juvenile court abused its discretion by not ordering services under section 361.5, subdivision (c) with regard to A.W. Again, we disagree.

As relevant here, section 361.5, subdivision (c) provides that a court "shall not" order services for a parent described

in subdivision (b)(10) and (11) "unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." In other words, the juvenile court is authorized to consider whether, despite the application of these bases for denying reunification services, the minor's best interest dictates that services be offered.

"Once it is determined one of the situations outlined in [section 361.5,] subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) "The burden is on the parent to change that assumption and show that reunification would serve the best interests of the child." (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227.) We review the juvenile court's determination for abuse of discretion. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 523-524.)

Here, when the juvenile court denied appellant reunification services, it emphasized her long history of failing to protect her children despite years of domestic violence services. Based on this history, the court properly could conclude there was little likelihood appellant would be able to safely reunify with A.W., even with the provision of more services. We discern no abuse of discretion in the court's determination that providing services to appellant under such circumstances would not be in the minor's best interest.

DISPOSITION

The juvenile court's orders are affirmed.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

DUARTE, J.